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BRYAN J. MOLES

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/475,602  
Filing Date: December 30, 1999  
Appellant(s): MOLES ET AL.

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John T. Mockler  
Reg. No. 39,775  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed on June 09, 2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

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**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,587,684 B1	Hsu et al.	07-2003
6321336 B1	Applegate et al	11-2001

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 9-15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu et al. US 6,587,684 B1 (hereinafter Hsu) in view of Applegate et al. US 6,321,336 B1 (hereinafter Applegate).

As per claims 1 and 17, Hsu teaches a wireless network comprising a plurality of base stations, each of said base stations capable of communicating with a plurality of mobile stations, a security device capable of

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preventing an unprovisioned one of said plurality of mobile stations from accessing an Internet protocol (IP) data network through said wireless network, said security device comprising:

A first controller (Proxy server interpreted by the examiner as the first controller) capable of receiving from said unprovisioned mobile station (column 15, lines 1-10) an IP data packet comprising an IP packet header and IP packet payload (column 6, lines 22-29 and column 15, lines 1-9 and figure 4B), determining the unprovisioned mobile stations is unprovisioned [column 15, lines 7-10 and 21-25]. Hsu further teaches transmitting the URL of a selected one of Provisioning Servers associated with the wireless device so that the wireless device can be activated by the provisioning server [column 15, lines 21-49]. Hsu is silent on replacing the IP packet header with a replacement IP packet header comprising an IP address of a selected one of the plurality of provisioning servers. However it is well known in the art to replace a packet header with an IP address of a destination address of a server (i.e., in this case provisioning server) in order to route data to a correct destination address and further provide efficient data transmission. For example, Applegate teaches a secure communication system, including replacing an IP packet header with a replacement IP packet header comprising an IP address of a selected one of servers (i.e., equivalent to provisioning server) associated with a wireless network [column 5, lines 34-65]. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the teachings of Applegate within the system of Hsu in order to efficiently route packets and further enhance security of the system.

As per claim 9, Hsu teaches a wireless network comprising:

a plurality of base stations, each of said base stations capable of communicating with a plurality of mobile stations [figure 1];

at least one provisioning server [column 15, lines 30-32 and figure 1, unit 24]; and

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a security device capable of preventing an unprovisioned one of said plurality of mobile stations from accessing an Internet protocol (IP) data network through said wireless network, said security device [figure 1 and column 15, lines 13-29] comprising:

a first controller capable of receiving from said unprovisioned mobile station (column 15, lines 1-10) an IP data packet comprising an IP packet header and an IP packet payload (column 6, lines 22-29 and column 15, lines 1-9 and figure 4B), determining the unprovisioned mobile stations is unprovisioned [column 15, lines 7-10 and 21-25]. Hsu further teaches transmitting the URL of a selected one of Provisioning Servers associated with the wireless device so that the wireless device can be activated by the provisioning server [column 15, lines 21-49]. Hsu is silent on replacing the IP packet header with a replacement IP packet header comprising an IP address of a selected one of the plurality of provisioning servers. However it is well known in the art to replace a packet header with an IP address of a destination address of a server (i.e., in this case provisioning server) in order to route data to a correct destination address and further provide efficient data transmission. For example, Applegate teaches a secure communication system, including replacing an IP packet header with a replacement IP packet header comprising an IP address of a selected one of servers (i.e., equivalent to provisioning server) associated with a wireless network [column 5, lines 34-65]. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the teachings of Applegate within the system of Hsu in order to efficiently route packets and further enhance security of the system.

As per claims 2 and 10, Hsu further teaches the device wherein said first controller is disposed in at least one of said plurality of base stations [column 6, lines 25-30].

As per claim 3 and 11, Hsu further teaches the device wherein said first controller is disposed in a mobile switching center of said wireless network [column 6, lines 25-30].

As per claim 4-7, 12-15 and 18-20, Hsu further teaches determining the unprovisioned mobile stations is unprovisioned [column 15, lines 7-10 and 21-25].

***Allowable Subject Matter***

Claims 8 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**(10) Response to Argument**

With respect to claim 1, Appellant argues that, the examiner has provided no explanation why a person of ordinary skill in the art having common sense at the time of the invention would have reasonably looked to Applegate to solve a problem already solved by Hsu. Appellant argues that, Applegate provides no suggestion that replacing the IP address of an FTP server with the address of an FTP proxy provides efficient routing of packets and the security enhancement of Applegate come not from replacing the IP address in the FTP packet, but rather from checking in the FTP proxy whether a connection to the intended FTP server is permitted. Appellant further argues that, the suggestion that the security of over-the-air provisioning should be improved and the solution of replacing the IP address in a data packet from an unprovisioned mobile station with the IP address of a provisioning server come only from the present application, not from the cited references.

In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. However, a suggestion, teaching, or motivation

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to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teachings, motivation, or suggestion may be implicit from the prior art, as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of a whole would have suggested to those of ordinary skill in the art. In re Kahn, 441 F.3d 977, 988, 78, USPQ2d 1329, 1336 (Fed. Cir. 2006) citing In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313 (Fed. Cir. 2000). See also In re Thrift, 298 F. 3d 1357, 1363, 63 USPQ2d 2002, 2008 (Fed. Cir. 2002). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). In this case Hsu teaches a controller (i.e., proxy server) receiving from an unprovisioned mobile station a request for activation request based on IP based addressing (see figure 4B and column 14, line 65-column 15, line 5), the proxy server further authenticate and accept the provisioning request and provides the uniform resource locator (URL) of home page of provisioning server (i.e., Name of the provisioning server where the provisioning information resides, column 15, lines 21-32). Although, Hsu does not teach replacing an IP packet header with a replacement IP packet header including address of the provisioning server, Hsu teaches providing the mobile station the URL (name of the server) as indicated above. However, Applegate teaches replacing an IP packet header with a replacement IP packet header including IP address of a selected one of plurality of servers [column 5, lines 34-65]. Hsu could have been modified by Applegate by substituting the method of submitting the name of a provisioning server as taught by Hsu by the method of replacing an IP address of a selected one of provisioning servers in the data packet provided by the mobile station as taught by Applegate thereby providing the requesting station access to the provisioning server indirectly through the replaced server IP address instead of the URL of the server and thereby enhance security of the system.

Appellant argues that, Hsu describes only a single provisioning server, not a plurality of provisioning servers.

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Examiner would point out that Hsu teaches a provisioning system including a plurality of servers including provisioning servers, revision control servers, etc., (column 7, lines 5-17 and column 14, lines 3-12).

With respect to claim 2, Appellant argues that Hsu fails to teach the limitation, the first controller is disposed in at least one of the plurality of base stations.

Examiner would point out that the Hsu teaches a provisioning system including the first controller that is disposed in at least one of a plurality of base stations (i.e., understood by the examiner to be equivalent to, the controller is in direct contact with the base station/base station controller, see figure 1 and column 5, lines 50-63).

With respect to claim 3, Appellant argues that Hsu fails to teach the limitation, the first controller is disposed in a mobile switching center of the wireless network.

Examiner would point out that the Hsu teaches a provisioning system including the first controller that is disposed in a mobile switching center of the wireless network (i.e., understood by the examiner to be equivalent to, the controller is in direct contact with the mobile switching center of the mobile network, see figure 1 and column 5, lines 50-63).

With respect to claim 4, Appellant argues that, Hsu fails to teach a second controller capable of determining that said unprovisioned mobile station is unprovisioned.

Examiner would point out that, Hsu teaches determining by the proxy server, provisioning servers etc., that the unprovisioned mobile station is unprovisioned [figures 4a-4c, and column 15, lines 7-49].

With respect to claim 5, Appellant argues that, Hsu fails to teach determining that a mobile station is unprovisioned from the inability of the mobile station to authenticate to a wireless network.



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Examiner would point out that Hsu teaches a mobile station provisioning system including authenticating the mobile station prior to activation and/or prior to providing access to activation system [column 15, liens 11-28].

With respect to claim 6, Appellant argues that, Hsu fails to teach predetermined telephone numbers associated with a service provisioning process or an unprovisioned mobile station selecting a service provisioning process and Hsu fails to teach a second controller capable of determining that an unprovisioned mobile station is unprovisioned according to a predetermined telephone number associated with a service provisioning process selected by the unprovisioned mobile station.

Examiner would point out that Hsu teaches a mobile station provisioning system including a controller that authenticates unprovisioned mobile station using internal mobile station identity and security key and determining whether the mobile station is provisioned or not [column 15, liens 11-28].

With respect to claim 7, Appellant argues that, Hsu fails to teach a controller determining that a mobile station is unprovisioned according to data retrieved from a home location register associated with the wireless network.

Examiner would point out that Hsu teaches a mobile station provisioning system including a controller that authenticates unprovisioned mobile station using internal mobile station identity and security key and determining whether the mobile station is provisioned or not [column 15, liens 11-28].

With respect to claim 8, Appellant argues that, Hsu fails to teach the first controller selecting one provisioning server by selecting said IP address in said replacement IP packet header according to a load spreading algorithm.

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Examiner would point out that, arguments with respect to claim 8 have been found persuasive and the rejection of claim has been withdrawn.

With respect to claims 9-16, Appellant presented similar arguments to those of claims 1-8. Examiner would point out that arguments with respect to claims 1-8 have been traversed as indicated above and therefore, arguments with respect to claims 9-16 have been traversed with the same reason applied thereto.

With respect to claims 17-20, Appellant presented similar arguments to those of claims 1 and 5-7. Examiner would point out that arguments with respect to claims 1 and 5-7 have been traversed as indicated above and therefore, arguments with respect to claims 1 and 5-7 have been traversed with the same reason applied thereto.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Beemnet W Dada/

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August 25, 2008

Conferees:

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